

Josh Smith, survived initial review. [Doc. 17]. Plaintiff alleged that these Defendants participated in beating the Plaintiff at the Burke County Courthouse where Plaintiff's criminal trial was held and/or at the Burke County Jail, where Plaintiff was brought after his trial ended in a mistrial. [Docs. 15, 15-1]. Plaintiff specifically alleged that a number of "Bailiffs and Jailers" participated in stripping Plaintiff's clothes off "and continued to hit [Plaintiff] in [his] ribs, kick and hurt [him] until they got all of [his] clothes off, then they shut the door and left." [Doc. 15-1 at 5].

Defendants Richards, Huffman, Sickjack, and Smith answered Plaintiff's Amended Complaint. [Doc. 30]. In their Answer, Defendants' alleged that "Defendants Huffman and Richards, and Deputy Randall assisted in the transportation of Plaintiff" after the mistrial was declared. [Doc. 30 at 2]. Defendants further alleged that Defendant Huffman and Deputy Randall "were forced to carry him and otherwise help him walk to the Bailiff's office, and then to the transport vehicle" after Plaintiff "went limp and refused to be transported." [Id. at 3].

Plaintiff now moves to amend his Complaint to add Deputy Randall as a Defendant in this matter. [Doc. 32]. Leave to amend should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15. To amend his Complaint, however, Plaintiff must make a motion and submit a proposed

amended Complaint that contains all claims he intends to bring in this action against all Defendants he intends to sue and states all relief he is seeking. Furthermore, if Plaintiff amends his Complaint, the original Complaint would be superseded, meaning that if an amended Complaint omits claims raised in the original Complaint, the plaintiff has waived the omitted claims. Young v. City of Mt. Ranier, 238 F.3d 567 (4th Cir. 2001).

Here, while Plaintiff submits various exhibits with his motion to amend, none of them appear to be a complete proposed (Second) Amended Complaint. [See Docs. 32-1, 32-2]. The Court, therefore, will deny Plaintiff's motion without prejudice so that Plaintiff may file a motion to amend together with a complete proposed (Second) Amended Complaint. To this extent, the Court will instruct the Clerk to mail Plaintiff a new Section 1983 form for Plaintiff to submit an amended complaint.

In sum, the Court will deny the Plaintiff's motion to amend his Complaint without prejudice in accordance with the terms of this Order. Because the deadline to amend and join parties has expired [see Doc. 31], the Court will order that Plaintiff must file his amended complaint within thirty (30) days of this Order.

ORDER

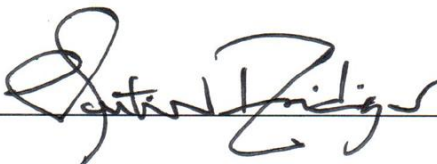
IT IS, THEREFORE, ORDERED that Plaintiff's motion [Doc. 32] is **DENIED WITHOUT PREJUDICE** in accordance with the terms of this Order.

IT IS FURTHER ORDERED that Plaintiff shall file a motion to amend and his proposed amended complaint within thirty (30) days of this Order or the matter will proceed against Defendants Richards, Huffman, Sickjack, and Smith only.

The Clerk is respectfully instructed to mail Plaintiff a blank Section 1983 form.

IT IS SO ORDERED.

Signed: September 23, 2020



Martin Reidinger
Chief United States District Judge

